

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARC ANTHONY BENCIVENGA,

No. C 11-04128 SI

Plaintiff,

v.

**ORDER DENYING PLAINTIFF'S
MOTION FOR ENTRY OF DEFAULT;
DENYING DEFENDANT'S MOTION TO
SET ASIDE DEFAULT; AND SETTING A
NEW BRIEFING SCHEDULE**

US BANK, NATIONAL ASSOCIATION, as
Trustee of GSAA HOME EQUITY TRUST,
Series 2005-11, BARRETT DAFFIN
FRAPPIER TREDER & WEISS, LLP,
GRACE EVERITT, DOES 1-10

Defendants.

On August 22, 2011, plaintiff filed a *pro se* complaint against defendants alleging claims related to a mortgage secured by plaintiff's home located at 2054 Oak Ridge Drive, Santa Rosa, California. (Doc. 1) On September 19, 2011, defendant law firm Barrett, Daffin, Frappier, Treder & Weiss, LLP ("Barrett") and individual defendant Grace Everitt responded by filing a motion to dismiss. (Doc. 8) Defendants Barrett and Everitt's motion to dismiss is scheduled for hearing on Nov. 18, 2011.

On September 21, 2011, because defendant US Bank had not yet responded to the complaint, plaintiff filed a motion for entry of default against it. (Doc. 11). However, no default was entered against US Bank because the Clerk of Court found that the process server for the complaint did not state on the return of service the relationship between the individual served and the defendant. On Sept. 26, 2011, the clerk requested plaintiff clarify that relationship before the clerk could enter a judgment of default. The plaintiff never responded. Finally, on October 5, 2011, despite the fact no default had been entered against it, US Bank filed a motion to set aside default and requested leave to file a motion to dismiss.

1 As an initial matter, the Court DENIES defendant US Bank's motion to set aside default as
2 unnecessary, because no default has been rendered against them, and GRANTS its request to file a
3 motion to dismiss. Defendant US Bank must file any motion to dismiss by **Tuesday, October 18, 2011**.


4 The Court DISMISSES plaintiff's motion for entry of default

5 The Court also will set a new briefing schedule for all parties. The hearing on Barrett and
6 Everitt's motion to dismiss set for November 18, 2011 is hereby VACATED. The hearing for all
7 defendants' respective motions to dismiss is now set for **December 2, 2011**.

8 Plaintiff must file oppositions to the motions to dismiss by **November 1, 2011**. The defendants
9 must file their replies by **November 8, 2011**.

10
11 **IT IS SO ORDERED.**

12
13 Dated: October 13, 2011



SUSAN ILLSTON
United States District Judge